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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 787

BERNARD J. AND MARY D. OHLENDORF,
Appellants,

v.

GARNETT AND MARTHA GAYLES,
PYRAMID BLDG. & LOAN ASSOCIATION,
PEARSON SUNDERLAND, JR., PRESIDENT, INDIVIDUALLY
AND T/A SUN LAND CORP.,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF MARYLAND

JURISDICTIONAL STATEMENT

BERNARD J. OHLENDORF,
2804 Christopher Avenue,
Baltimore, Maryland 21214,
Attorney for Appellants.

The Daily Record Co., Baltimore, Md. 21203

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IN THE

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GARNETT AND MARTHA GAYLES,
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PEARSON SUNDERLAND, JR., PRESIDENT, INDIVIDUALLY
AND T/A SUN LAND CORP.,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF MARYLAND

JURISDICTIONAL STATEMENT

Appellants appeal from the final judgment of the Court of Appeals of the State of Maryland entered on 6 July 1970 which denied Appellants' petition for a writ of certiorari, filed in the Court of Appeals of the State of Maryland on 19 June 1970, to the Baltimore City Court; said Baltimore City Court having entered a verdict on 21 May 1970, said verdict was not embodied in a written opinion, which granted the motions to dismiss for all appellees. The Baltimore City Court conducted the trial on 21 May 1970 as a

result of Appellants' appeal from the People's Court of Baltimore City; said People's Court having summarily dismissed the suit, and Appellant's reason for appeal to the Baltimore City Court amounting to stating a denial of due process of law under the fourteenth amendment of the Constitution of the United States. Appellants were precluded from taking an appeal to the Court of Appeals of the State of Maryland and were required to petition for a writ of certiorari pursuant to Art. 5, Sections 1 and 21 of the Annotated Code of Maryland. Appellants submit this statement to show that this Court possesses jurisdiction and that substantial constitutional questions are presented. See appendix page 1a, re Appellants' appeal to the Baltimore City Court, appendix page 2a re Appellants' petition for a writ of certiorari, appendix page 5a re the order which denied the petition for certiorari, appendix page 6a re Appellants' notice of appeal to this Court, and appendix page 7a re the Annotated Code of Maryland provisions.

OPINION BELOW

The judgment of the Court of Appeals of the State of Maryland which denied Appellants' petition for a writ of certiorari was rendered on 6 July 1979, with Chief Judge Hall Hammond signing the order. No written opinion or memorandum was handed down by the Baltimore City Court or the People's Court of Baltimore City. Aforementioned order which denied Appellants' petition for a writ of certiorari is set forth in the appendix at page 2a.

JURISDICTION

This is an appeal from the denial by the Court of Appeals of the State of Maryland of Appellants' petition for a writ of certiorari, the petition being filed pursuant to the provisions of Art. 5, Sections 1 and 21 of the Annotated Code

of Maryland. The denial by the Court of Appeals of the State of Maryland was entered on 6 July 1970. Notice of Appeal was filed on 4 August 1970. See appendix page 8a re the denial of Appellants' petition for a writ of certiorari, appendix page 6a re the notice of appeal, and appendix page 7a re the Annotated Code of Maryland provisions.

Jurisdiction in the Supreme Court to review the decision of the Court of Appeals of the State of Maryland by direct appeal is conferred by Title 28, United States Code, Section 1257(2). The following decisions sustain the jurisdiction of this Court to review the judgment in this case on direct appeal and to take any required reversal action: *Williams, et al. v. Brufy*, 102 U.S. 248 (1880); *Forney v. Towle*, 1 Black 350 (1862); *Skinner v. State of Oklahoma*, 316 U.S. 535 (1942); *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); *Honeyman v. Hanna*, 300 U.S. 14 (1937).

THE STATUTE

The validity of the statute, under which appellants were precluded from appealing the Court Below judgment but were required to seek review of the aforementioned judgment by petition for a writ of certiorari, is questioned on this appeal. The statute is set forth in the appendix at page 7a.

QUESTIONS PRESENTED

1. Does the statute, under which appellants were precluded from seeking review of the judgment of the Court below and were required to seek review of the aforementioned judgment by petition for a writ of certiorari, arbitrarily discriminate between different classes of persons in derogation of the equal protection clause of the Fourteenth Amendment of the U.S. Constitution?

2. Does the Baltimore City Court's oral opinion, which made no mention of the law and evidence presented by Appellants but which was based solely on the testimony of a biased witness Cordray, the President of the Appellee Bldg. and Loan Assn., and the refusal by the Court of Appeals of Maryland to review the opinion of the Baltimore City Court amount to discrimination in the administration of the laws and legal proceedings in derogation of Appellants' rights under the equal protection clause of the Fourteenth Amendment of the U.S. Constitution?

3. Is the above mentioned oral opinion of the Baltimore City Court and refusal to review by the Court of Appeals of Maryland so arbitrary and unreasonable as to amount to a denial of due process of law in derogation of Appellants' rights guaranteed by the Fourteenth Amendment of the U.S. Constitution?

4. Is the above mentioned oral opinion of the Baltimore City Court and refusal to review by the Court of Appeals of Maryland so arbitrary as to amount to spoliation of property in derogation of the due process of law rights guaranteed to Appellants under the Fourteenth Amendment of the U.S. Constitution?

5. Does the summary dismissal by the People's Court of Baltimore City and the refusal to review the oral opinion of the Baltimore City Court amount to a denial of due process of law in derogation of the rights guaranteed to Appellants by the Fourteenth Amendment of the U.S. Constitution?

6. Is the verdict entered by the Baltimore City Court, which becomes law through the refusal of the Court of Appeals of Maryland to review the verdict, contrary to the well settled law of the State of Maryland as to amount to a denial of due process of law guaranteed to Appellants by the Fourteenth Amendment of the U.S. Constitution?

7. Is the above mentioned verdict of the Baltimore City Court against the evidence of record so as to amount to a denial of due process of law guaranteed to Appellants by the Fourteenth Amendment of the U.S. Constitution?

8. Does the above mentioned verdict of the Baltimore City Court give license to a principal to permit security to diminish in his hands to the detriment of a guarantor, give license to a purchaser of real property to default without recourse by another who has made a guaranty for the benefit of the purchaser and satisfied the guaranty on default by the purchaser, and give license to intermeddlers to collude with a purchaser to bring about a foreclosure sale in order to purchase at a below market value and below the purchase price in order to turn over a fast profit so as to be against the general welfare of the people of the City of Baltimore and the State of Maryland and in derogation of Appellants' rights guaranteed by the due process of law and the equal protection of the law provisions of the Fourteenth Amendment of the U.S. Constitution?

STATEMENT OF THE CASE

Appellants entered into a contract of sale with Appellees Gayles to purchase real property known as 1352 Homestead Street in Baltimore City for the amount of $9,000.00 subject to an annual ground rent of $96.00. Conditions precedent to settlement for the purchase of the property were the advancing of closing costs by Appellants for the benefit of Appellees Gayles and execution of a guaranty agreement to guaranty to Appellee Building and Loan Association, Mortgagee, an amount of up to $2,500.00 in the event of default by Appellees Gayles and necessitating a foreclosure sale which would result in a deficiency; the guaranty being for the benefit of Appellees Gayles. Appellants fulfilled all conditions precedent, settlement was

held on 11 December 1962, and Appellees Gayles took possession of the aforementioned sale property. After taking possession Appellees Gayles fell into default, but Appellee Building and Loan Association granted a number of extensions of time for payment by Appellees Gayles without any concurrence therein by Appellants; an extension of time even being granted after written notice of 1 July 1965 to Appellees Gayles from Appellee Building and Loan Association to the effect that foreclosure proceeding would be started if full back payment was not received on or before a stated date. The value of the aforementioned property steadily declined from the time of the aforementioned 1 July 1965, when Appellee Building and Loan Association could have and should have foreclosed, to the time of foreclosure proceedings being instituted on 30 March 1966 to Appellants' detriment. The foreclosure sale resulted in a deficiency, and Appellants were required to forfeit $2,500.00 to Appellee Building and Loan Association. The aforementioned sale property was purchased at the foreclosure sale by Appellee Sun Land Corporation; the natural person doing the buying for the corporation being a representative of the employer of Appellee Garnett Gayles and the purchase being made without any prior evaluation of the aforementioned property and as a good will gesture to Appellee Garnett Gayles. Appellants then entered suit in the People's Court of Baltimore City which was summarily dismissed without Appellants being given an opportunity to be heard when Appellants were inadvertently delayed, due to an injury to Appellant Bernard J. Ohlendorf; Appellants arriving approximately ten minutes after the beginning of the court session and after the cause of action had been dismissed. Appeal then was taken by Appellants to the Baltimore City Court for reason that amounts to stating a denial of due process of law under the Fourteenth Amendment of the Constitution of the United States. Trial was

held on 21 May 1970 in the Baltimore City Court which resulted in all Appellees having their motions to dismiss granted; the Court placing great emphasis on testimony of biased witness Cordray, President of Appellee Bldg. & Loan Assn., and completely ignoring the fact that no Appellee controverted liability or case law cited by Appellants in any significant manner, either as a matter of fact or as a matter of law. Moreover, no Appellee cited any case law or in any significant manner disproved Appellants' allegations. On the other hand, Appellants produced evidence and cited law substantiating entitlement to the relief requested by Appellants. Petition for a writ of certiorari was timely filed by Appellants in the Court of Appeals of Maryland on 19 June 1970, and the petition was denied by order of the Court of Appeals of Maryland on 6 July 1970. Appellants then timely filed a notice of appeal to this Court on 4 August 1970 in the Court of Appeals of Maryland and the Baltimore City Court, and this statement is timely filed to respectfully solicit this Court to assume jurisdiction and review the matter in controversy. See appendix page 2a re the petition for writ of certiorari, appendix page 5a re denial of said petition, and appendix page 6a re the notice of appeal.

HOW THE FEDERAL QUESTIONS ARE PRESENTED

The Federal questions sought to be reviewed in this Court were raised in Appellants' petition for a writ of certiorari to the Court of Appeals of Maryland. Appellants' assigned reasons for seeking review by writ of certiorari amounted to contentions that Appellants had been denied the right of due process of law and equal protection of the law guaranteed to them by the Fourteenth Amendment of the U.S. Constitution; the due process deprivation being specifically stated in assigned reasons 1 and 3. See assigned reasons for

seeking review by the Court of Appeals of Maryland beginning on appendix page 4a.

Appellants reiterated their contentions of denial of due process of law and equal protection of law in the Notice of Appeal; the equal protection of the law contention being specifically stated in assigned reason 4. See appendix page 6a and 7a re the notice of appeal.

The validity of Art. 5, Sections 1 and 21, of the Annotated Code of Maryland was questioned in assigned reasons 3 and 4 of appellants' notice of appeal; it not being possible to raise this contention until the Court of Appeals of Maryland had ruled on Appellants' petition for a writ of certiorari. See appendix page 7a re notice of appeal reasons 3 and 4 and the statute involved.

The contention that the verdict of the Baltimore City Court and the refusal to review said verdict by the Court of Appeals of Maryland was against the public welfare was raised in assigned reason 2 of the notice of appeal; it not being possible to raise this contention until the Court of Appeals of Maryland had ruled on Appellants' petition for a writ of certiorari. See appendix page 6a.

THE QUESTIONS ARE SUBSTANTIAL.

In *Harper, et al. v. Virginia State Board of Elections, et al.*, 383 U.S. 671 (1966), this Court held "* * * We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. * * *." Further, this Court held in the aforementioned *Harper* case that "* * * The equal protection cases carefully analyzed boil down to the principle that distinctions drawn and even discriminations imposed by state laws do not violate

the Equal Protection Clause so long as these distinctions are not 'irrational,' 'irrelevant,' 'unreasonable,' 'arbitrary,' or 'invidious.' * * *."

In *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), this Court held, "* * * there should be no arbitrary deprivation of life or liberty, or arbitrary spoliation of property, but that equal protection and security should be given to all under like circumstances in the enjoyment of their personal and civil rights; that all persons should be equally entitled to pursue their happiness, and acquire and enjoy property; that they should have like access to the courts of the country for the protection of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts; that no impediment should be interposed to the pursuits of any one, except as applied to the same pursuits by others under like circumstances; that no greater burdens should be laid upon one than are laid upon others in the same calling and condition; and that, in the administration of criminal justice, no different or higher punishment should be imposed upon one than such as is prescribed to all for like offenses. * * * Class legislation, discriminating against some and favoring others, is prohibited; * * *".

In *Honeyman v. Hanan*, 300 U.S. 14 (1937), this Court held "* * * In the exercise of our appellate jurisdiction we have power not only to correct errors in the judgment under review but to make such disposition of the case as justice requires. * * *"

The record in the instant case is replete with those fundamental rights and liberties being asserted of which this Court has long been mindful; classification of which this Court has recognized must be closely scrutinized; "unreasonable", "arbitrary", and "invidious" distinctions which

this Court has recognized as violative of the Equal Protection Clause; arbitrary spoliation of property which this Court has recognized as violative of the Fourteenth Amendment of the U. S. Constitution; and the failure of courts of this country to protect Appellants' property, to redress wrongs of which Appellants have been aggrieved, and to enforce Appellants' contracts which this Court has recognized as violative of the Fourteenth Amendment of the U. S. Constitution so that no reasonable man could deny this Court's right and obligation to exercise the power of appellate jurisdiction to correct errors in the judgment of the Court below and make such disposition of the instant case as justice requires.

I.

VALIDITY OF THE STATUTE

In the instant litigation, Appellants chose to bring suit in the People's Court of Baltimore City due to the low dollar value involved ($2,500) and more expedient litigation, as is the custom in Baltimore City. Since Appellants chose to begin litigation in the People's Court of Baltimore City, they were precluded from appeal to the Court of Appeals of Maryland by Art. 5, Section 1 of the Annotated Code of Maryland. Had Appellants chose to initially file suit in one of the courts of the Supreme Bench of Baltimore City, appellants could have taken an appeal to the Court of Appeals of Maryland pursuant to Art. 5, Section 1 of the Annotated Code of Maryland. This statute is clearly an arbitrary discrimination between different classes of persons, those who chose to initiate litigation in the People's Court of Baltimore City and those who initiate litigation in one of the courts of the Supreme Bench of Baltimore City, seeking redress for the same wrongs, which is proscribed by the Fourteenth Amendment of the U. S. Constitution. In view of the above discussed Harper

case holding that such "classifications which might invade or restrain" fundamental rights and liberties "must be closely scrutinized" and the invasion of fundamental rights demonstrated by the record in this case, it is considered that the validity of Art. 5, Sections 1 and 21 of the Annotated Code of Maryland presents a substantial question for review by this Court.

II.

BALTIMORE CITY COURT OPINION AS DISCRIMINATORY IN THE ADMINISTRATION OF THE LAWS AND LEGAL PROCEEDINGS.

Appellants submitted evidence in the Baltimore City Court which proved the facts set forth in the aforementioned Statement of the Case; namely, the contract of sale between Appellants and Appellees Gayles, the guaranty agreement entered into by Appellants with Appellee Bldg. & Loan Assn. for the benefit of Appellees Gayles, default by Appellees Gayles, extensions of time granted to Appellees Gayles by Appellee Bldg. & Loan Assn. without Appellants' concurrence after default by Appellees Gayles, depreciation of the property value which was the security for said guaranty agreement by Appellee Bldg. & Loan Assn. through the improper extensions of time granted to Appellees Gayles by Appellee Bldg. & Loan Assn. to the detriment of Appellants, loss of $2,500 by Appellants due to deduction from Appellants' pass book by Appellee Bldg. & Loan Assn. to satisfy the default by Appellees Gayles by virtue of said guaranty agreement, and purchase at the foreclosure sale of the property involved in said contract of sale by a representative of the employer of Appellee Garnett Gayles for said employer as a good will gesture toward said Garnett Gayles and without prior investigation into the property value or other detail by said representative or his employer.

Appellants cited law of the State of Maryland which showed that an interest in the property sold at the foreclosure sale remained in Appellants through the failure of other parties in interest to make appellants a party to the foreclosure proceeding, that the extensions of time granted by Appellee Bldg. & Loan Assn. were improper and illegal, that the Appellants had a right of redress against Appellees Gayles through their default and the guaranty agreement for their benefit and against appellee Bldg. & Loan Assn. for the improper extensions of time granted without Appellants' concurrence and for allowing the security of the guaranty agreement to depreciate in the hands of the principal (appellee Bldg. & Loan Assn.) when the principal could have and should have instituted foreclosure proceedings but failed to do so, and that Appellants had a right of recourse against Appellee Pearson Sunderland individually and T/A Sun Land Corp. who purchased at the foreclosure sale for reason that said purchaser at the foreclosure sale could have and should have ascertained Appellants' interest in the sale property through a diligent search and was not a bona fide purchaser for value in view of having failed to make said diligent search prior to purchase.

No Appellee successfully controverted the above facts and law, but the Baltimore City Court granted the motion to dismiss proffered by each Appellee.

In view of the above discussed Harper case and the subject matter discussed above re Appellants' question 2, it is considered that the instant case involves violation of the fundamental rights and liberties guaranteed to Appellants by the Fourteenth Amendment of the U. S. Constitution to the extent to amount to a substantial question required to be reviewed by this Court.

III.

OPINION OF THE BALTIMORE CITY COURT A DENIAL OF DUE PROCESS.

The record of the instant case clearly shows that the opinion of the Baltimore City Court was not supported by evidence and there is no reasonable justification for the decision. As held in *Canty v. Board of Education, City of New York*, 312 F. Supp. 254 a decision is "arbitrary" or "capricious" so as to violate due process when it is not supported by evidence or when there is no reasonable justification for the decision. Accordingly, it is considered that Appellants' question 3 is so substantial as to merit review by this Court.

IV.

OPINION OF THE BALTIMORE CITY COURT AMOUNTS TO A SPOLIATION.

It is considered that no reasonable man would deny that a person forfeiting property to satisfy a guaranty agreement for the benefit of another has a right of redress against someone. However, Appellants have forfeited property for the benefit of Appellee Gayles and been given no redress by the courts of this country. Appellants consider this court action to amount to a substantial question re spoliation of property to be worthy of review by this Court.

V.

SUMMARY DISMISSAL BY THE PEOPLE'S COURT OF BALTIMORE CITY A DENIAL OF DUE PROCESS.

A number of postponements were granted after Appellants filed suit. On one occasion when trial was set to proceed, Appellants called the absence of Appellee Bldg. & Loan Assn. representative and its attorney to the attention of the court which resulted in another postponement after the Judge called the office of said attorney. When Appel-

lants appeared ten minutes late on the next date for which trial was set, the case had been summarily dismissed without any effort having been made to even contact Appellants. What could be more arbitrary and violative of due process? There is little doubt that any reasonable man would consider Appellants' question 5 to be other than so substantial as to require review by this Court. See reason 1 set forth in Appellants' petition for a writ of certiorari on page 4a of the appendix.

VI.

VERDICT OF THE BALTIMORE CITY COURT CONTRARY TO THE WELL SETTLED LAW OF THE STATE OF MARYLAND A DENIAL OF DUE PROCESS.

The record in the instant case as discussed in question 2 above clearly demonstrates that the verdict of the Baltimore City Court is contrary to the well settled law of the State of Maryland. In view of the arbitrary verdict as not founded in law and the aforementioned *Honeyman v. Hanan* and *Canty v. Board of Education* cases, it is considered that question 6 is so substantial that this Court should exercise the power of appellate jurisdiction to correct the errors in the record and make such disposition of the case as justice requires. See reasons 4, 5, 6, and 10 set forth in Appellants' petition for a writ of certiorari beginning on page 4a of the appendix.

VII.

VERDICT OF THE BALTIMORE CITY COURT AGAINST THE EVIDENCE OF RECORD A DENIAL OF DUE PROCESS.

The record in the instant case as discussed in question 2 above clearly demonstrates that the verdict of the Baltimore City Court was clearly against the evidence. In view of the arbitrary verdict as not based on substantial evidence and the aforementioned *Honeyman v. Hanan* and *Canty v. Board of Education* cases, it is considered that

question 7 is so substantial that this Court should exercise the power of appellate jurisdiction to correct the errors in the record and make such disposition of the case as justice requires. See reasons 2 and 10 set forth in Appellants' petition for a writ of certiorari beginning on page 4a of the appendix.

VIII.

VERDICT OF THE BALTIMORE CITY COURT AGAINST THE GENERAL WELFARE OF THE PEOPLE A DENIAL OF DUE PROCESS.

In view of reasons 7, 8, and 9 set forth in Appellants' petition for a writ of certiorari beginning on appendix page 4a, the above discussed *Yick Wo v. Hopkins* case, and the well settled mandates of this Court safeguarding the public welfare, it is considered that question 8 is sufficiently substantial to be worthy of this Court's review.

CONCLUSION

For the reasons stated above, it is respectfully solicited that the verdict of the Baltimore City Court and the denial of Appellants' petition for a writ of certiorari by the Court of Appeals of Maryland be summarily reversed, or, in the alternative, jurisdiction over the appeal herein be noted.

Respectfully submitted,

BERNARD J. OHLENDORF,

Attorney for Appellants.

APPENDIX

APPEAL TO THE BALTIMORE CITY COURT

In The People's Court
Of Baltimore City

Case No. 2917 67
Case No. 2766 67

Bernard J. and Mary D. Ohlendorf

Plaintiffs,

v.

Gayles, et al.,

Defendants.

Plaintiffs not having been given an opportunity to be heard at the hearing held on 29 September 1969 and not being apprised of any defense offered by any defendant hereby appeal the determination entered on 29 September 1969 in the record against the Plaintiffs in the above titled case. Please transmit the entire record, including Plaintiffs' brief, to the Baltimore City Court for consideration on appeal.

Respectfully submitted,

PETITION FOR WRIT OF CERTIORARI

In the Court of Appeals of Maryland
From the Baltimore City Court

Case No.	*13778–c* / *9–082614*	*284* / *17PC*	*70*
Case No.	*13767–c* / *9–082638*	*296* / *17PC*	*70*

Bernard J. and Mary D. Ohlendorf,

Plaintiffs,

v.

Gayles, et al.,

Defendants.

Pursuant to Article 5, Section 21 of the Annotated Code of Maryland, Plaintiffs respectfully solicit that the Court require by certiorari that the above titled case be certified to the Court of Appeals of Maryland for review and determination.

The above titled litigation grew out of a contract of sale between Plaintiffs and Defendants Gayles to purchase real property known as 1352 Homestead Street in Baltimore City for the amount of $9,000.00 subject to an annual ground rent of $96.00. Conditions precedent to settlement for the purchase of the property were the advancing of closing costs by Plaintiffs for the benefit of Defendants Gayles and execution of a guaranty agreement to guaranty to Defendant Building and Loan Association, Mortgagee, an amount of up to $2,500.00 in the event of default by Defendants Gayles and necessitating a foreclosure sale which would result in a deficiency; the guaranty being for the benefit of Defendants Gayles. Plaintiffs fulfilled all conditions precedent, settlement was held on 11 December 1962, and Defendants Gayles took possession of the

aforementioned sale property. After taking possession Defendants Gayles fell into default, but Defendant Building and Loan Association granted a number of extensions of time for payment by Defendants Gayles without any concurrence therein by Plaintiffs; an extension of time even being granted after written notice of 1 July 1965 to Defendants Gayles from Defendant Building and Loan Association to the effect that foreclosure proceedings would be started if full back payment was not received on or before a stated date. The value of the aforementioned property steadily declined from the time of the aforementioned 1 July 1965, when Defendant Building and Loan Association could have and should have foreclosed, to the time of foreclosure proceedings being instituted on 30 March 1966 to Plaintiffs' detriment. The foreclosure sale resulted in a deficiency, and Plaintiffs were required to forfeit $2,500.00 to Defendant Building and Loan Association. The aforementioned sale property was purchased at the foreclosure sale by Defendant Sun Land Corporation; the natural person doing the buying for the corporation being a representative of the employer of Defendant Garnett Gayles and the purchase being made without any prior evaluation of the aforementioned property and as a good will gesture to Defendant Garnett Gayles. Plaintiffs then entered suit in the Peoples Court of Baltimore City which was summarily dismissed without Plaintiffs being given an opportunity to be heard when Plaintiffs were inadvertently, delayed due to an injury to Plaintiff Bernard J. Ohlendorf; Plaintiffs arriving approximately ten minutes after the beginning of the court session and after the cause of action had been dismissed. Appeal then was taken to the Baltimore City Court for reasons that amount to stating a denial of due process of law under the fourteenth amendment of the Constitution of The United States. Trial was held on 21 May 1970 in the Baltimore City Court which resulted in all Defendants having their motions to dismiss granted; the Court placing great emphasis on testimony of one witness, a Mr. Cordray, and completely ignoring the fact that no Defendant controverted liability or case law cited by Plaintiffs in any manner, either as a matter of fact or as

a matter of law. Moreover, no Defendant cited any case law or in any manner disproved Plaintiffs' allegations. On the other hand, Plaintiffs produced evidence and cited law substantiating entitlement to the relief requested by Plaintiffs.

Plaintiffs respectfully request that the Court sustain the petition for a writ of certiorari for reasons that:

1. The action of the Peoples Court of Baltimore City summarily dismissing Plaintiffs' cause of action amounted to a denial of due process of law for Plaintiffs.

2. The verdict entered by the Baltimore City Court is against the evidence of record.

3. The conclusion reached by the Baltimore City Court was so arbitrary and capricious as to amount to a denial of due process of law for Plaintiffs.

4. The verdict entered by the Baltimore City Court is counter to the well settled law in the State of Maryland that a guarantor is entitled to exoneration, contribution, or subrogation when his property is taken for the debt of another.

5. The verdict entered by the Baltimore City Court is counter to the well settled law of the State of Maryland that an extension of time to a debtor releases the guarantor from his obligation under the guaranty agreement.

6. The verdict entered by the Baltimore City Court is counter to the well settled law that a party having an interest in a property must be joined as a party in a foreclosure proceeding to cut off his interest in the property.

7. Allowing the verdict of the Baltimore City Court to stand gives license to a principal to permit security in his hands to diminish in value to the detriment of the guarantor.

8. Allowing the verdict of the Baltimore City Court to stand gives license to a purchaser of real property to default without recourse to another making a guaranty for

the purchaser if the purchaser should become dissatisfied with the purchase price subsequent to settlement.

9. Allowing the verdict of the Baltimore City Court to stand gives license to an intermeddler to collude with a purchaser to bring about a foreclosure sale and buy at a foreclosure sale below market value and below the price to which the purchaser is obligated.

10. Plaintiffs presented evidence and cited law establishing entitlement to their claim and no Defendant controverted, as a matter of law or matter of fact, the evidence and law cited by Plaintiffs.

Respectfully submitted,

DENIAL OF PETITION FOR WRIT OF CERTIORARI

In the Court of Appeals of Maryland

Docket No. 123 *70*

Bernard J. Ohlendorf, et ux.,
Plaintiffs,

v.

Gayles, et al.,
Defendants.

Upon consideration of the petition for a writ of certiorari to the Baltimore City Court in the above entitled case, it is

ORDERED by the Court of Appeals of Maryland that the said petition be, and it is hereby, denied.

/s/ HALL HAMMOND,
Chief Judge.

Date: July 6, 1970.

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

(Filed 4 August 1970)

In the Court of Appeals of Maryland
And the Baltimore City Court

Case No.	*13778–c* / *9–082614*	*284* / *17PC*	*70*
Case No.	*13767–c* / *9–082638*	*296* / *17PC*	*70*

Bernard J. and Mary D. Ohlendorf,
Plaintiffs,

v.

Gayles, et al.,
Defendants.

Pursuant to 28 U.S.C. 1257, Plaintiffs respectfully solicit that an appeal be entered on their behalf to the Supreme Court of the United States from the order passed on the 6th day of July 1970 by the Court of Appeals of Maryland which denied Plaintiffs' petition for writ of certiorari to the Baltimore City Court in the above titled cases; the appeal being taken for reasons that:

1. Plaintiffs have set forth in the Petition For Writ of Certiorari filed by Plaintiffs in the Court of Appeals of Maryland on 19 June 1970.

2. Denial of Plaintiffs' aforementioned Petition For Writ of Certiorari is against the Public Welfare of the Citizens of Baltimore City in the State of Maryland in violation of the fourteenth amendment of the U. S. Constitution, because said denial permits law made by the Baltimore City Court to stand which permits lending institutions to allow property to depreciate to the detriment of a guarantor to the extent to which an amount has been guaranteed, per-

mits mortgagors to default in payments and not be liable to a guarantor who guarantees an amount for the benefit of said mortgagor, and permits intermeddlers to turn over a fast profit through collusion with mortgagors.

3. Denial of Plaintiff's aforementioned Petition For Writ of Certiorari amounts to a denial of due process of law guaranteed to Plaintiffs by the Fourteenth Amendment of the U. S. Constitution, because they are unable to have their grievance considered on the merits by the highest Court of the state.

4. Denial of Plaintiff's aforementioned Petition For Writ of Certiorari amounts to a denial of equal protection of law guaranteed to Plaintiffs by the 14th amendment of the U. S. Constitution, because Plaintiffs are unable to have their grievance considered on the merits by the highest court of the state as a result of Plaintiffs choice to proceed at the magistrate level; all other lower court decisions in the State of Maryland being reviewable by the Maryland Court of Appeals.

5. Plaintiffs will set forth in the jurisdictional statement required by the Supreme Court of the United States.

Respectfully submitted,

STATUTE INVOLVED

Article 5, Annotated Code of Maryland

Section 1. Any party may appeal to the Court of Appeals from any final judgment or determination of a court of law in any civil suit or action, including a mandamus action, or in any prosecution for the recovery of any penalty or fine or damages; provided, however, that this section shall not be construed to permit an appeal to the Court of Appeals from any judgment or determination entered by a court of law in the proper exercise of its

jurisdiction on appeal from a justice of the peace, people's court or trial magistrate.

* * * * * *

Section 21. In any case in which a final judgment has been rendered by the circuit court of any county or by one of the courts of Baltimore City upon appeal from a justice of the peace, people's court, trial magistrate, or Municipal Court of Baltimore City if it shall be made to appear to the Court of Appeals in the case of a civil action or to the Court of Special Appeals in the case of a criminal action upon petition of any party that a review is necessary to secure uniformity of decision, as where the same statute has been construed differently by the courts of two or more circuits, or that there are other special circumstances rendering it desirable and in the public interest that the case should be reviewed, the Court of Appeals or the Court of Special Appeals, as the case may be, shall require by certiorari or otherwise, any such case to be certified to it for review and determination.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 787

BERNARD J. AND MARY D. OHLENDORF,
Appellants,

v.

GARNETT AND MARTHA GAYLES,
PYRAMID BLDG. & LOAN ASSOCIATION,
PEARSON SUNDERLAND, JR., PRESIDENT, INDIVIDUALLY AND T/A SUN LAND CORP.,
Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

MOTION TO DISMISS OR AFFIRM

Appellee, Pearson Sunderland, Jr., President, Individually and T/A Sun Land Corp., and Appellee, Pyramid Bldg. & Loan Association, move the Court to dismiss the appeal herein or that the final judgment of the Baltimore City Court and the action of the Court of Appeals of Maryland be affirmed on the following grounds:

1. No Federal or constitutional question is presented by this appeal.

2. The alleged Federal questions sought to be reviewed were not properly raised.

3. The alleged Federal questions involving the issues presented were not expressly passed on by the Court of Appeals of Maryland.

STATEMENT

The facts as set forth in Appellants' Jurisdictional Statement show that Appellants sold their leasehold property and improvements thereon known as 1352 Homestead Street, Baltimore City, Maryland, to Appellees, Garnett and Martha Gayles (hereinafter referred to as "Gayles") for a purchase price of $9,000.00. In order to obtain financing from Appellee, Pyramid Bldg. & Loan Association (hereinafter referred to as "Pyramid") so that said sale could be consummated, the Appellants hypothecated or pledged the sum of $2,500.00 so that Pyramid would loan to Gayles sums necessary to complete said purchase. Settlement for said property was held, title transferred to the Gayles, who executed a mortgage to Pyramid, and Appellants executed a hypothecation agreement which provided, among other things, that in the event of foreclosure and sale for a sum less than sufficient to net Pyramid the amount of its claim, Pyramid was authorized to deduct from said sum so hypothecated such amount as would be sufficient to make good any deficiency.

Subsequently, after default by Gayles in the repayment of the mortgage to Pyramid, Pyramid instituted foreclosure proceedings as provided for in said mortgage and in conformity with Article 66 of the Annotated Code of Maryland (1957 Edition) 1968 Replacement Volume in the Cir-

cuit Court of Baltimore City. After due notice thereof public sale of the aforesaid leasehold property was held at which sale Sun Land Corp., a body corporate of the State of Maryland, purchased said property and subsequently took title thereto, said sale having been ratified and confirmed by the Circuit Court of Baltimore City, without any objections to said proceedings having been filed by said Appellants or any other party. It will be noticed that the purchaser at said sale was not Pearson Sunderland, Jr., either individually or t/a Sun Land Corp. and, in fact, he never attended the sale. The said sale realized to Pyramid the amount of $5,310.62, although the then due balance of said mortgage at the time foreclosure proceedings were instituted was $8,322.61 and, in accordance with the hypothecation agreement, the sum pledged by the Appellants was applied on account of said deficiency.

Thereafter Appellants instituted legal proceedings against the Gayles in the People's Court of Baltimore City and thereafter by separate proceedings included Appellees Pyramid and Pearson Sunderland, Jr., individually and t/a Sun Land Corp. in said proceedings. Said proceedings were dismissed in the People's Court of Baltimore City when Appellant, Bernard J. Ohlendorf, failed to appear at the time set for trial. Appellants filed an appeal to the Baltimore City Court. After a complete hearing on said matter, said case having been tried *de novo* in accordance with Article 5, Section 30 of the aforesaid Maryland Code, 1968 Replacement Volume and Section 15-6, Baltimore City Public Local Laws, Everstine, 1969, Judge Anselm Sodaro found in favor of all defendants, which finding, it is submitted, was proper and in accordance with the facts. At said trial the Appellants presented evidence, had the right of cross examination and argument as to the facts and law. Appellants subsequently filed a motion for new trial and, after the same was

denied, filed a petition for writ of certiorari to the Maryland Court of Appeals which was denied by that Court without opinion.

QUESTIONS PRESENTED

The questions presented are really only four:

1. Was any Federal question presented under the facts of this case which would entitle the Appellants to a review by this Court?

2. Were the alleged Federal questions sought to be reviewed properly raised below?

3. Was any action taken by the lower Court or Courts a denial of due process as guranteed by the Fourteenth Amendment of the Constitution of the United States?

4. Do Sections 1 and 21 of Article 5 of the Annotated Code of Maryland (1957 Edition) 1968 Replacement Volume deny Appellants equal protection as provided for in the said Fourteenth Amendment of the Constitution of the United States?

On behalf of the Appellees it is submitted that the answers to all questions must be in the negative.

ARGUMENT

I.

NO FEDERAL OR CONSTITUTIONAL QUESTION IS PRESENTED BY THIS APPEAL.

The question of presentation of Federal or constitutional questions can be broken down into two parts as raised by the Appellants: (1) that Article 5, Sections 1 and 21 did not deny Appellants equal protection; and (2) that Appellants were not denied due process.

Concerning the equal protection question, one fails to see how Appellants can contend they were denied equal protection. The People's Court of Baltimore City has exclusive jurisdiction of all cases up to $1000.00 and concurrent jurisdiction with the lawcourts of Baltimore City on matters involving $1000.00 to $2,500.00. Baltimore City Public Local Laws, Everstine, 1969, Section 15-6, p. 79.

The appeals provisions of cases arising in the People's Courts are clearly set forth in Article 5, Sections 1 and 21 of the aforesaid Annotated Code of Maryland and Section 15-23 of the aforesaid Public Local Laws of Baltimore City p. 89. Appellants, as is admitted on page 10 of their Jurisdictional Statement, *chose* their tribunal and are bound by the rules and statutory limitations of the same. Everyone bringing suit in this tribunal suffers the same limitation with respect to ultimate appeal to the Court of Appeals although everyone utilizing the People's Court of Baltimore City has the right of appeal to the Baltimore City Court. Article 5, Section 30 Annotated Code of Maryland (1957 Edition) 1968 Replacement Volume, Section 15-23 Public Local Laws of Baltimore City p. 89. Therefore, it is submitted that there is no distinction as to class. As was said in *National Union of Marine Cooks and Stewards v. Arnold*, 348 U.S. 37, 41 (1954):

> "The question before us is whether the procedure which has culminated in the dismissal of petitioner's appeal violates either the Due Process or the Equal Protection clause of the Fourteenth Amendment.
>
> "We have no difficulty with the Equal Protection Clause because no showing has been made that anyone comparably situated has been treated differently from the petitioner."

Nor is there any showing in the present case that Appellants have been treated differently from anyone availing

themselves of the People's Court or trial magistrate procedure. See also *Dohany v. Rogers*, 281 U.S. 362, 369 (1930), where this Court says:

> "Nor does the equal protection clause exact uniformity of procedure. The legislature may classify litigation and adopt one type of procedure for one class and a different type for another."

Concerning the question of denial of due process, it should also be mentioned that the appeal procedure in Maryland where cases are instituted at the magistrate level is certainly not a denial of due process and even if no appeal were allowed this would not be a denial of due process no more than a denial of equal protection as previously discussed. See again *National Union of Marine Cooks and Stewards v. Arnold, supra*, where it is said at page 43:

> "While a statutory review is important and must be exercised without discrimination, such a review is not a requirement of due process." (Citation omitted.)

See also *Dohany v. Rogers, supra*, where, in a suit by which plaintiff attempted to enjoin the State of Michigan from acquiring his land by a statute which he claimed unconstitutional and to have it condemned under a different statute, this Court stated at page 369:

> "The due process clause does not guarantee to the citizen of a state any particular form or method of state procedure. Under it he may neither claim a right to trial by jury nor a right of appeal. Its requirements are satisfied if he has reasonable notice and reasonable opportunity to be heard and to present his claim or defense, due regard being had to the nature of the proceeding and the character of the rights which may be affected by it." (Citations omitted.)

In summary, with respect to the validity of Article 5, Sections 1 and 21 of the aforesaid Maryland Code, it is

submitted that inasmuch as all classes of litigants are treated equally under the terms thereof and in view of the decisions of this Court, there can be no denial of equal protection or of due process.

II.

THERE WAS NO DENIAL OF DUE PROCESS BY ANY LOWER COURT.

Concerning the many other allegations of due process, these are probably best answered by the language of this Court in *New York & New England Railroad Company v. Bristol*, 151 U.S. 556, 570 (1893):

> "As observed by Mr. Justice Miller in *Davidson v. New Orleans*, 96 U.S. 97, 104, the Fourteenth Amendment cannot be availed of 'as a means of bringing to the test of the decision of this Court the abstract opinions of every unsuccessful litigant in the state court of the justice of the decision against him, . . .'"

While this motion may not be the forum for the discussion of the substantive law of Maryland, some mention must be made of same to answer arguments II, III, IV, VI, VII and VIII of Appellant's Jurisdictional Statement as found on pages 11 through 15 of said Statement. As these arguments advance the same points, that the Appellants were denied due process and that the Judge was discriminatory in administration of the law, all arguments may be answered together. The facts show a sale from the Appellants to Gayles, a mortgage from Gayles to Pyramid, Appellants, as an inducement to Pyramid to make said loan, executing a hypothecation to Pyramid with the terms hereinbefore discussed. Default occurred, foreclosure proceedings were instituted and sale under the same was made to Sun Land Corp., said sale being ratified by the Circuit Court in which proceedings were brought. A deficiency occurred and, in accordance with the hypotheca-

tion agreement, money was withdrawn from Appellants' account to satisfy the deficiency. Certainly the purchaser, at foreclosure, is not subject to any action because there was a deficiency at sale, the sale being proper and without criticism as to proceedings and conduct, nor can the lending institution, because it availed itself of the benefit of the agreement Appellants voluntarily signed and without which the loan would not have been made, be subject to legal action. Appellants had no lien on this property, but even if they did see Tiffany *Real Property*, abridged edition, 1940, Section 934, page 1002.

> "It has been stated that the purchaser under a power of sale acquires the title which the mortgagor had at the time of executing the mortgage, unaffected by any subsequent transfer or lien. This is certainly true when the mortgagor vests legal title in the mortgagee since legal title vested in the mortgagee for certain purposes, including that of sale, cannot be divested by any equity subsequently occurring in favor of a third person."

While the decisions discussing this are many, it seems nothing more need be added.

One additional comment need be made. Appellants contend in their argument VI, page 14 of the Jurisdictional Statement, that the verdict of the Baltimore City Court is contrary to the well-settled law of Maryland citing reasons 4, 5, 6 and 10 of their petition for writ of certiorari, Jurisdictional Statement, page 4(a).

Answering reason 4, while a guarantor at times may have a right of subrogation, the following question arises here: Was this a true guarantee or were not Appellants entering this hypothecation agreement for their own benefit so that the sale could be consummated?

Reason 5 is just not the law of Maryland. 11 Maryland Law Encyclopedia, *Guaranty*, Section 9, page 440:

> "However, mere delay or promise to extend time, without consideration, is insufficient to discharge the guarantor, as is mere indulgence or forbearance in extending the time for payment or performance, not predicated on an actual agreement."

As to reason 6, it is questioned first if Appellants are parties in interest in a mortgage foreclosure. If they are, which is denied the Appellants merely having an agreement with Pyramid and no interest in the property, see *Chilton v. Brooks*, 71 Md. 445, 448:

> "1. Exception was taken because certain subsequent encumbrances were not made parties. This was untenable because the proceeding authorized by statute is wholly *ex parte* and without process; and other lien holders are allowed to come in by petition and assert their claims on the proceedings."

With respect to reason 10, it is felt that the above controverts some of Appellants' "law" and it is felt that perhaps Appellants, acting as their own counsel, may have been too close to the woods to see the trees.

While the Baltimore City Court based its decision on settled precedents and made the only possible decision, if it be assumed for the purpose of argument that this Court did err, it is here submitted that this, of itself, would not raise a Federal question. See, for example, *Conigan v. Buckley*, 271 U.S. 323, 331 (1926):

> "The defendants were given a full hearing in both courts; they were not denied any constitutional or statutory right; and there is no semblance of ground for any contention that the decrees were so plainly arbitrary and contrary to law as to be acts of mere spoilation. (Citations omitted.) Mere error of a court,

> if any there be, in a judgment entered after a full hearing does not constitute a denial of due process of law."

See also *Bell Telephone Company of Pennsylvania v. Pennsylvania Public Utility Commission*, 309 U.S. 30, 32 (1940) and *Worchester County Co. v. Riley*, 302 U.S. 292, 299 (1937):

> "Petitioner's real concern is that the judgment of the California court, if it should decide that decedent was domiciled there, may be erroneous or may conflict with that of the Massachusetts courts . . . In any case the Constitution of the United States does not guarantee that the decisions of the state courts shall be free from error." (Citations omitted.)

It is therefore submitted that Appellants having had a full day in court with all of the guarantees of a fair trial, and nowhere do Appellants contend the trial was not fair, there was no denial of due process, but rather, no other verdict could be granted. Additionally, it is submitted, that Appellants produced no evidence of word or deed showing a denial of due process by the Baltimore City Court.

Concerning Appellants' argument No. V, page 13 Jurisdictional Statement, the facts will indicate that on the day of trial Appellants failed to appear and the case was dismissed. It would appear that even if the court were hasty in its dismissal, Appellants could have immediately refiled their proceedings in the People's Court or taken the alternative which they chose and filed an appeal which, as stated, granted them a full trial on the merits. Appellants, having an alternative of remedies, certainly cannot claim that they were denied any due process.

III.

THE ALLEGED FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE NOT PROPERLY RAISED BELOW.

As was stated in *Honeyman v. Hanan*, 300 U.S. 14, 18 (1937):

> "Before we may undertake to review a decision of the court of a state, it must appear affirmatively from the record, not only that the Federal question was presented for decision to the highest court of the state having jurisdiction but that its decision of the Federal question was necessary to the determination of the cause."

The first question which must be decided is at what level should any alleged Federal question have been presented? Under Article 5, Sections 1, 21 and 30 of the Annotated Code of Maryland (1957 Edition) 1968 Replacement Volume, it appears obvious that while the Baltimore City Court tried this case *de novo*, this was the appellate level, and, therefore the "highest court of the state having jurisdiction" would be the Baltimore City Court. Appellants, in their Jurisdictional Statement, showed no evidence of the presentation at that level of any Federal question.

If it should be decided that the highest court having jurisdiction is the Maryland Court of Appeals, then it should be noted that Appellants, in their petition for writ of certiorari, failed to include any reference to Article 5, Sections 1 and 21 of the Maryland Code and any question that this statute denied equal protection under the Fourteenth Amendment.

The only two alleged Federal questions in the petition for writ of certiorari (Jurisdictional Statement page 4(a)) were: Reason No. 1 — The action of the People's Court denied due process which is fully answered in this motion

on page 10; and Reason No. 3 — That that conclusion of the Baltimore City Court was a denial of due process, which, it is felt, has been amply answered, there being no cause of action by the Appellants against any of the Appellees.

In conclusion, it should be stated that the Honeyman case requires that not only must the Federal question be submitted to the highest court for decision, but "that its decision of the Federal question was necessary to the determination of the cause." It is submitted that under the facts of this case the Court of Appeals of Maryland or the Baltimore City Court could easily determine this cause without the necessity of deciding any Federal question.

CONCLUSION

For the foregoing reasons stated it is respectfully requested that this Court dismiss the appeal presented or, in the alternative, affirm the judgment of the Baltimore City Court and the action of the Court of Appeals of Maryland.

Respectfully submitted,

JOHN C. GRIFFIN,

GEORGE W. DELLA,

Attorneys for Appellees.

SUPREME COURT, U. S.

FILED

FEB 18 1971

E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 787

BERNARD J. AND MARY D. OHLENDORF,

Appellants,

v.

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PYRAMID BLDG. & LOAN ASSOCIATION,
PEARSON SUNDERLAND, JR., PRESIDENT, INDIVIDUALLY
AND T/A SUN LAND CORP.,

Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF MARYLAND

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

BERNARD J. OHLENDORF,
2924 Christopher Avenue,
Baltimore, Maryland 21214,
Attorney for Appellants.

The Daily Record Co., Baltimore, Md. 21203

IN THE

Supreme Court of the United States

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No. 787

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Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE STATE OF MARYLAND

BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM

The motion of appellees Pyramid Bldg. & Loan Association and Pearson Sunderland, Jr., President, Individually and T/A Sun Land Corp. to dismiss or affirm this appeal in no way detracts from the substantiality of the questions presented or from the appropriateness and indeed the need of some affirmative action by this Court. That fact is apparent from the statement and arguments advanced in that

motion, arguments as to which only the following need be said:

I. STATEMENT.

The statement in the motion is presented with material omissions which amount to a misrepresentation of the facts; such omissions being readily apparent on comparison with Appellants' Statement of the Case beginning on page 5 of the Jurisdictional Statement. Moreover, regarding Appellees' statement on page 2 of the motion that Appellants hypothecated or pledged a sum of $2,500.00, Appellants entered into a guaranty contract with appellee Pyramid Bldg. & Loan Association, specifically identified as such a contract on the face of the document, whereby Appellants guaranteed the payment of $2,500.00 in the event of mortgage default by appellees Gayles. The guaranty agreement incorporated the Mortgage contract between Appellees Gayles and Appellee Pyramid Bldg. & Loan Association by reference, the Mortgage contract contained the usual foreclosure on default provision, and the guaranty agreement contained no provision authorizing Appellee Pyramid Bldg. & Loan Association to make any extensions of time for payment in the event of any default by Appellees Gayles without the written approval therefor by Appellants; as would be necessary for the Guaranty contract to operate other than is the conventional legal operation of Guaranty contracts. There were defaults by Appellees Gayles, there were extensions of time granted by Appellee Pyramid Bldg. & Loan Association, and there was no written approval by Appellants for any extension of time granted. Further, Appellees' statement on page 3 of the motion that Pearson Sunderland, Jr. was not the purchaser is contrary to the facts, because Appellee Sunderland's answers to written interrogatories addressed to him as

President of the Sun Land Corp. did not controvert that he was in fact the President and admitted that Sun Land Corporation was the purchaser. Also, the Mortgage document evidences Sun Land Corp. to be the purchaser. One need not be physically present at a foreclosure sale to be the purchaser.

2. Argument By Appellees.

It is to be noted that Appellees' motion cites Constitutional Law which is well established. However, all of the Constitutional case law cited by Appellees is taken out of context of the issue involved in the instant litigation; such out of context citation being blatantly typical of piecemeal prosecution and emphatically demonstrating that appellees have lost the issue in the forest of irrelevancy, a common failing of many bar examinees. The issue in litigation is, of course, the unconstitutional impairment of a contractual obligation, and appellees have cited no Constitutional Law precedent grounded in such a factual situation. It is submitted that appellees have not cited any Constitutional Law grounded in unconstitutional impairment of a contractual obligation for the reason that there is no Constitutional law which supports their position, but, to the contrary, the Constitutional Law which exists re the unconstitutional impairment of contractual obligation supports Appellants' position; namely, *City of El Paso v. Greenberry Simmons*, 85 S. Ct. 577 (1965); *Ashwander, et al. v. Tennessee Valley Authority, et al.*, 297 U.S. 288 (1936); *Richmond Mortgage & Loan Corp. v. Wachovia Bank & Trust Co., et al.*, 300 U.S. 124 (1937); and *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934). Appellants will prove to this Court at a hearing on the merits that the action of the Courts of the State of Maryland unconstitutionally impaired contractual obligations

to the detriment of Appellants which resulted in a spoliation of Appellants' property.

3. Federal Question, Due Process, and Equal Protection.

Arguments I, II, and III starting on pages 4, 7, and 11 respectively of the motion are considered to be so badly intermingled that it is difficult to determine exactly what position is being taken by Appellees. However, an effort will be made to answer the argument in the motion insofar as it is understandable.

Regarding the equal protection discussion on page 5 of the motion, Appellees demonstrate an excellent working knowledge of the jurisdiction of various tribunals, but appellees mislead this Court as to how Appellants have been denied equal protection. Appellees admit in the motion on page 10, lines 1 to 3 of the last paragraph thereof, that the People's Court of Baltimore City dismissed the case without a hearing and on page 11, lines 6 of the second paragraph that the case was tried de novo in the Baltimore City Court. Article 5, of the Annotated Code of Maryland set forth on page 7a of the Jurisdictional Statement Appendix permits an appeal to the Court of Appeals of Maryland from an action initially filed in the Baltimore City Court but denies a right of appeal to the Court of Appeals of Maryland from an action initially filed in the People's Court of Baltimore. The spirit of this legislation is to give a lower court hearing with a review by an appellate court. It is clear from the facts and in essence admitted by Appellees that the only lower court hearing obtained by Appellants was in the Baltimore City Court. If initially filed there, Appellants could have appealed to the Court of Appeals of Maryland. However, by law, Appellants had to proceed by Petition for Writ of Certiorari pursuant to Art.

5, Section 21 of the Annotated Code of Maryland set forth on page 8a of the Jurisdictional Statement Appendix. The Petition for Writ of Certiorari having been denied, Appellants were in effect given only a lowtr court hearing without any appellate review which is guaranteed to all other citizens of Maryland by the above discussed Art. 5 provisions. Accordingly, Appellants have been denied equal protection of the laws. The third paragraph on page 11 of the motion is answered by lines 8 to 14 on page 8 of the Jurisdictional Statement.

Regarding due process of law, it appears that the position being taken by Appellees can be best summarized by the last sentence on page 10 of the motion. It is indeed a novel concept in the annals of Constitutional Law that the requirements of due process are fulfilled merely by presenting a litigant with alternative remedies. This position of Appellees is considered to be so absurd as to not be even worthy of comment. However, it must be stated that Appellants find themselves in the proverbial Pandora's box with no possibility of obtaining the legal relief to which they are constitutionally entitled in the absence of intervention by this Court; namely, Appellants have not been given a trial at the magistrate level, Appellants are precluded from taking an appeal to the Court of Appeals of Maryland by State law, but Appellants are forced by state law to seek review by Petition for Writ of Certiorari which was denied. Appellants have been given a trial only in the Baltimore City Court from which other litigants in the State of Maryland have a right of appeal but which right has been denied by law to Appellants, and Appellants have been refused to have the issues reviewed on Petition for Writ of Certiorari by the highest Court of the State of Maryland; Appellants having set forth a basis for abridgment of their constitutional rights in the Petition for Writ

of Certiorari and having been refused the right to have evidence introduced and considered by the Baltimore City Court running to the fair market value of the property in litigation.

In view of the discussion set forth above, it is considered that the motion has not successfully controverted the Constitutional case law cited by Appellants, Appellants' contentions as to denial of due process and equal protection of the law, and the substantiality of the questions as set forth beginning on page 8 of the Jurisdictional Statement.

4. Response to Jurisdictional Statement.

It is to be noted that Appellees Gayles have not responded to the Jurisdictional Statement.

5. Non-timely Motion.

The motion was not timely filed as required by Rule 16 and for reasons set forth in Appellants' request to deny any extension of time.

6. Challenge.

The admission to practice before this Court by the Attorneys for Appellees on the motion is challenged.

7. Summary.

The instant litigation presents yet another instance of making a mockery and a myth of the concepts of due process and equal protection of the law and the prohibition of unconstitutional impairment of a contractual obligation. Let us begin with the instant case by a reversal of the courts of the State of Maryland to make it perfectly clear to every legal forum in the United States that the aforementioned concepts are to be rigidly applied in both letter and spirit and not merely given lip service as demonstrated by the instant litigation.

CONCLUSION

For the various reasons set forth herein, supplementing those in the Jurisdictional Statement, appropriate action is respectfully solicited to be taken by this Court to vacate or reverse the judgment below and to exercise the power of Appellate jurisdiction to make such disposition of the instant litigation as justice requires, as recited in *Honeyman v. Hanan*, 300 U.S. 14 (1957).

Respectfully submitted,

BERNARD J. OHLENDORF,

Attorney for Appellants.

Supreme Court, U.S.
FILED
MAR 17 1971
E. ROBERT SEAVER, CLERK

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Appellees.

ON APPEAL FROM THE COURT OF APPEALS OF THE
STATE OF MARYLAND

PETITION FOR REHEARING

Pursuant to Rule 58, Appellants hereby respectfully petition The Court for a rehearing re the order of 1 March 1971 which dismissed Appellants' appeal and denied Certiorari.

The facts of the instant litigation are quite simple; namely, Appellants guaranteed payment of $2,500.00 for the benefit of Appellees Gayles to Appellee Bldg. & Loan Assn. in event of default by Appellees Gayles. Appellees Gayles did default, Appellee Bldg. & Loan Assn. did noth-

ing to safeguard Appellants' interest as owed to a guarantor, Appellants have been unable to recover any portion of the $2,500.00 rightfully belonging to them, and the Courts of Maryland have stood idly by and afforded Appellants no relief.

It is considered that the instant litigation points up wrongs committed against Appellants which are exemplary of the irresponsible and undisciplined attitudes and acts toward others' rights and property which are running rampant through this country today. Unless responsible leaders in our Society, including this Court, begin to set an example which requires strict responsible and disciplined acts and attitudes toward the rights and property of others, which this Court has failed to do to date re the above titled litigation, how can we expect any greater degree of responsibility and discipline to be exercised and exhibited by the younger people in this country?

While the instant litigation lacks the glamour of the land mark cases of This Court, The Highest Court of This Country should stand ready, willing, and able to right all wrongs, large and small, against all aggrieved persons; natural and corporate, large and small, political and non political, and rich and poor.

It is absolutely unbelievable and unconscionable that, in This Great Country which boasts of Democracy and Justice for all, the Highest Court of this Country should stand idly by and permit a citizen to literally have $2,500.00 taken from him without any recourse, as in the instant litigation.

Unless this Court reverses the order dismissing Appellants' appeal and denying certiorari and grants the relief requested by Appellants in their Jurisdictional Statement and Brief in Opposition To Motion To Dismiss or Affirm,

it can only be considered that the death knell has been sounded and need has tolled for the Judicial System as now employed in This Country, and all responsible persons should begin looking for and attempting to establish a Judicial System which truly renders Justice for all; not merely for the High and the Mighty with the Poor and the Meek being granted the privilege and enormous pleasure of being able to participate, as in the present System, through lip service.

Respectfully submitted,

BERNARD J. OHLENDORF,

2924 Christopher Avenue,
Baltimore, Maryland 21214,

Attorneys for Appellants.